



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VINCENT ALAIMO, et al.,

Plaintiffs,

-v-

AUTOMOTIVE CONSULTING, et al.,

Defendants.

07 CV 7623 (KMK)

ORDER ADOPTING REPORT AND
RECOMMENDATION

KENNETH M. KARAS, U.S.D.J.:

On June 8, 2010, Magistrate Judge Smith entered a Report & Recommendation ("R&R") recommending that this Court dismiss this case with prejudice for failure to prosecute. (R&R (Dkt. No. 41) 4.) Magistrate Judge Smith also provided notice that objections to her conclusions were due within seventeen working days, and that failure to object would constitute a waiver of Plaintiffs' right to appeal. (*Id.*) No objections have been filed.

When no objections are filed, the Court reviews an R&R on a dispositive motion for clear error. *See Eisenberg v. New England Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008); *Donahue v. Global Home Loans & Fin., Inc.*, No. 05-CV-8362, 2007 WL 831816, at *1 (S.D.N.Y. Mar. 15, 2007). The Court has reviewed the R&R and finds no error, clear or otherwise. However, in light of the Second Circuit's requirement that the Court consider lesser sanctions, *see Lewis v. Rawson*, 564 F.3d 569, 576 (2d Cir. 2009), and the fact that there has been no specific prejudice to Defendants beyond the prejudice that always attends delay (R&R 3), the Court chooses to exercise its discretion and dismiss the case without prejudice. Therefore, it is

ORDERED that Defendants' original Motion to Dismiss (Dkt. No. 31) is DENIED as moot. It is further

ORDERED that Defendants' Motion for Involuntary Dismissal (Dkt. No. 40) is GRANTED and the case is DISMISSED without prejudice for failure to prosecute.

The Clerk of the Court is respectfully requested to terminate the relevant motions and to close this case.

DATED: White Plains, New York
July 20, 2010

KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE